

# Exhibit 41

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Richard Markowitz - April 8, 2021

Page 1

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF NEW YORK  
3                   CASE NO. 18-MD-2865 (LAK)

4                  IN RE: )  
5                  )  
6                  CUSTOMS AND TAX ADMINISTRATION OF )  
7                  THE KINGDOM OF DENMARK )  
8                  (SKATTEFORVALTNINGEN) TAX REFUND )  
9                  SCHEME LITIGATION )  
10                 ) )  
11                 This document relates to case nos. )  
12                 19-cv-01783; 19-cv-01788; 19-cv-01794; )  
13                 19-cv-01798; 19-cv-01918 )  
14                 ) )  
15                 ) )

16                 C O N F I D E N T I A L

17                 SUBJECT TO THE PROTECTIVE ORDER

18

19

20                 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

21

22                 EXAMINATION OF

23

24                 RICHARD MARKOWITZ

25

26                 DATE: April 8, 2021

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35                 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 RICHARD MARKOWITZ,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:  
4  
5  
6

7 EXAMINATION BY MR. WEINSTEIN:

8 Q Good morning, Mr. Markowitz.  
9 MR. BONGIORNO: Marc, before we get  
10 going, I just wanted to mention that  
11 Mr. Markowitz is diabetic and we're  
12 going to have to just keep a close eye  
13 on his levels. So every, I don't know,  
14 45, 50, 55 minutes or so, we're just  
15 going to ask that he check it, see  
16 whether or not he needs a break or a  
17 snack or anything. But I didn't want  
18 to -- I'm obviously trying to do it in a  
19 way that doesn't interrupt the flow of  
20 the deposition. I just wanted to let  
21 you know.

22 MR. WEINSTEIN: Right. Thank you.  
23 I appreciate that, and we'll accommodate  
24 any needs there.

25 Q Mr. Markowitz, my name is Marc

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1                   And ultimately they didn't find you  
2 another leverage provider?

3                   MR. BONGIORNO: Objection.

4                   A I disagree with the premise of your  
5 question.

6                   Q Okay. Ultimately, were they able  
7 to provide -- to find another leverage  
8 provider?

9                   A No.

10                  Q Can you turn, please, to  
11 Exhibit 2116?

12                  MR. WEINSTEIN: Mark this as 2116.

13                  (Whereupon the above mentioned was  
14 marked for Identification.)

15                  MR. BONGIORNO: Marc, maybe after  
16 you finish with this one, we can take  
17 our next break?

18                  MR. WEINSTEIN: Yeah.

19                  Q So Mr. Shah sends you an e-mail in  
20 April of 2012 asking if you have a pension  
21 fund in the U.S. that can be used for trading  
22 equities and derivatives.

23                  Do you recall receiving that from  
24 him?

25                  A Yes.

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1 Q At the time that you got it, did  
2 you have a pension fund in the U.S. that  
3 could be used for trading equities and  
4 derivatives?

5 A I don't recall.

6 Q Okay. Did you understand that this  
7 question was in the context of dividend --  
8 the dividend arbitrage strategy?

9 A Yes.

10 Q Do you recall what your response  
11 was to Mr. Shah?

12 A No.

13 Q Did you end up setting up a pension  
14 fund in the U.S. to be used for trading  
15 equities or derivatives as part of a dividend  
16 arbitrage strategy?

17 A Yes.

18 Q Okay. And what pension plans did  
19 you set up to be used for that purpose?

20 A RJM Capital Pension Plan, among  
21 others.

22 Q When was RJM Capital Pension Plan  
23 established?

24 A Sometime in 2013.

25 Q Okay. Did -- along with your

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1 brokers were going to go find the liquidity  
2 for these trades in the marketplace?

3 A From sellers of shares.

4 Q Okay. Where did you expect they  
5 were going to find these sellers?

6 A In all the dividend arbitrage  
7 strategies we had looked at and participated  
8 in, that was up to the brokers to find that  
9 liquidity, given the economics of the trade  
10 and the advantage of dividend arbitrage.

11 As I said, profitability could be  
12 shared. The sellers could have been other  
13 investors who were not entitled to the tax  
14 benefits. They could have been short  
15 sellers, long sellers.

16 So the source of the stock was up  
17 to the brokers and the sellers to obtain  
18 based on market liquidity.

19 Q Okay. And was it your  
20 understanding that the sellers in each case  
21 would be executing on the Solo platform?

22 A We were informed by Solo that other  
23 counterparty to the trade would likely be  
24 customers of Solo as well.

25 Q Okay. And is that -- that's true

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1 for the sellers of the shares?

2 A Yes.

3 Q Okay. And so was it your  
4 understanding that the sellers of the shares  
5 were going to be customers of Solo?

6 A Yes.

7 Q Was that also true for the forward  
8 or future counterparties?

9 A Yes and no.

10 Q Yeah, let me withdraw that.

11 Was that going to be true with  
12 respect to the forward counterparties?

13 A Yes.

14 Q Okay. Was that also going to be  
15 true with respect to the stock lending  
16 counterparties?

17 A Yes.

18 Q Okay. And so, when you say the  
19 brokers were going to go out into the market,  
20 the market that they were going to go into  
21 was the Solo customer list.

22 Correct?

23 A Again, they could have gone to the  
24 Solo customers or other customers if they  
25 wanted to. There was no limit placed.

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1 plan get the seller his or her 50 percent  
2 profit on the deal?

3 A Again, the plan didn't pay the  
4 money to the seller. The plan paid the money  
5 or a fee, as was previously negotiated, to a  
6 company called Ganymede Investments, I  
7 believe, and would have received an invoice  
8 for that.

9 And it was up to Ganymede to  
10 distribute those funds, if needed, to other  
11 counterparties.

12 Q What was Ganymede?

13 A A company.

14 Q Okay. Was it a company that you  
15 had ever heard of prior to starting this  
16 dividend arbitrage trading strategy with Solo  
17 Capital?

18 A No.

19 Q Okay. Did you do any due diligence  
20 on Ganymede prior to doing any transactions  
21 with it?

22 A Patriot Act, AML, and basic  
23 information on the owners of the company.

24 Q Okay. What information did you  
25 obtain on the owners of the company,

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1           Ganymede?

2           A     I believe it was owned by Sanjay  
3           Shah.

4           Q     Okay. And so Mr. Shah told you  
5           that?

6           A     We might have received corporate  
7           documents that -- from wherever the company  
8           was incorporated that showed that.

9           Q     Okay. Do you know if you actually  
10          did that, or did you just hear from Mr. Shah  
11          that he owned it?

12          A     I don't recall which one it was at  
13          this point.

14          Q     Okay. What -- did Ganymede provide  
15          services to any of the pension plans that you  
16          were affiliated with?

17          A     The services would have been  
18          assistance in the overall transaction, I  
19          think, from our perspective, as I explained,  
20          the amount of sharing of profit from the  
21          trades and fees to Solo, similar to the  
22          Merrill Lynch trade. Those would be paid to  
23          an entity designated by Solo.

24                 And they designated Ganymede, and  
25          it was up to that entity and Solo to decide

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1 how those fees would be parceled out. But it  
2 was part of the overall construction of the  
3 trade.

4 Q Okay. Other than facilitating  
5 getting the money to the right places, did  
6 Ganymede, the entity, provide services to the  
7 pension plans?

8 A I viewed Ganymede and Solo and  
9 Sanjay Shah as one entity. So yes, in my  
10 belief, there were significant services  
11 provided in developing and becoming a  
12 custodian at Solo Capital, and hiring all the  
13 staff necessary to allow the custodian to  
14 function, and to allow our pension plans or  
15 other pension plans to execute these trades.

16 Q Okay. So you viewed Solo Capital  
17 and Ganymede as interchangeable?

18 A Yes.

19 Q Okay. And do you -- did you have  
20 an understanding as to why you got an  
21 instruction from Mr. Shah to use the Ganymede  
22 entity on certain occasions as opposed to the  
23 Solo Capital entity?

24 A No.

25 Q Okay. Solo Capital had operations

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1 to this agreement, you were agreeing to pay  
2 Ganymede 66.67 percent -- I'm not even sure I  
3 said that right.

4 Pursuant to this agreement, you  
5 were agreeing to pay Ganymede 66.67 percent  
6 of that refund amount that's in the schedule,  
7 but minus the Acupay fee.

8 Correct?

9 A My understanding was that the  
10 pension plan was entitled to 50 percent, the  
11 other 50 to the seller, and we would pay to  
12 Solo or its designee a 34 percent fee similar  
13 to the arrangements we had at Broadgate.

14 The net result to the pension plan  
15 is to retain approximately 34 percent of the  
16 reclaim. That's our understanding of any  
17 fees that were paid.

18 It starts with a 50/50 split with  
19 the seller.

20 Q Okay. I'm just asking what -- what  
21 this agreement says. And the agreement that  
22 you signed with Ganymede was that the plan  
23 would pay Ganymede 66.67 percent of that  
24 refund amount in schedule -- in the schedule,  
25 except that deducted from that refund amount

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20                 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER

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22                 ORAL EXAMINATION OF

23

24                 RICHARD MARKOWITZ

25

26                 VOLUME 11

27

28                 DATE: April 9, 2021

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34                 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 RICHARD MARKOWITZ,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:

4 CONTINUED EXAMINATION BY MR. WEINSTEIN:  
5

6 Q Mr. Markowitz, if you can turn to  
7 Exhibit 2133, please?

8 Did each of the partnerships listed  
9 in this exhibit earn profits from the Danish  
10 dividend arbitrage strategy?

11 A (Witness reviewing.)

12 MR. BONGIORNO: Objection.

13 A I don't recall.

14 Q Did the partnerships earn profits  
15 from any other investing activity other than  
16 the Danish dividend arbitrage strategy?

17 A Yes.

18 Q What other investment strategies  
19 did these partnerships earn money from?

20 A Dividend arbitrage investments.

21 Q So their profits were generated  
22 entirely by dividend arbitrage strategies?

23 A Yes.

24 Q Did those strategies involve  
25 Denmark and Belgium?

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1 can establish pension plans to participate in  
2 the dividend arbitrage strategy?

3 A No.

4 Q Okay. So you had thoughts that you  
5 would do business using the LLCs.

6 Right?

7 A That is certainly one function of  
8 those LLCs.

9 Q Okay. And how many LLCs were you  
10 intending to have set up?

11 A At the time, in discussions with  
12 Solo Capital about market liquidity and  
13 capacity, and to spread that liquidity in our  
14 allocation among our allocation of the market  
15 liquidity among clients, I think we were  
16 intending somewhere between 30 and 40 pension  
17 plans would be established.

18 Q Okay. But the number of pension  
19 plans and LLCs that would be set up were  
20 based on what Sanjay Shah and Solo told you  
21 would be a market allocation for the dividend  
22 arbitrage strategy?

23 A No. The overall allocation would  
24 be indicated to us or forecasted. It was up  
25 to us to decide if we wanted to spread that

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1 opportunity to two additional individuals.

2 Q Okay. And those are Ms. Jones and  
3 Mr. Herman?

4 A Yes.

5 Q Okay. And they are related to you?

6 MR. BONGIORNO: Objection.

7 A Yes.

8 Q So after Mr. -- after Solo Capital  
9 informed you that there was additional  
10 capacity for the trading, LLCs and pension  
11 plans were set up for Ms. Jones and  
12 Mr. Herman?

13 A Yes.

14 Q And did they each have three LLCs  
15 and pension plans set up?

16 A Yes.

17 Q Okay. So, ultimately, there was a  
18 group of 40 plans that were trading using  
19 this strategy.

20 Is that right?

21 A Yes.

22 Q Were -- three of the new plans that  
23 were set up were set up on your behalf.

24 Is that right?

25 A Yes.

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1       that role?

2           A     I don't recall.

3           Q     Well, did Mr. Ben-Jacob -- well,  
4       withdrawn.

5                   Did Kaye Scholer assist with the  
6       establishment of the new LLCs and pension  
7       plans?

8           A     Yes.

9           Q     Okay. And was that true for all 40  
10      of the new LLCs and pension plans?

11          A     No.

12          Q     And not all of them were new.

13                   Is that correct?

14          A     Yes.

15          Q     Okay. So, of the 40 LLCs and  
16      pension plans, for those that were newly  
17      established in 2014, did Kaye Scholer assist  
18      in establishing them?

19          A     Yes.

20          Q     Was it your understanding that each  
21      of the plan participants for those new  
22      pension plans signed a similar limited power  
23      of attorney granting Mr. Ben-Jacob the power  
24      to do the same things?

25          A     I don't recall.

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1           A    We received advice that explained  
2       the issues surrounding that related to a  
3       different jurisdiction in Denmark, and that  
4       it created additional tax risk for the  
5       pension plans.

6           Q    Okay. Can you turn, please, to  
7       Exhibit 1829?

8                   MR. BONGIORNO: Day 1, Volume 1.

9           Q    This e-mail from you is about  
10      Danish reclaim payments received from Syntax.

11                  Is that right?

12           A    Yes.

13           Q    And you say in the e-mail that "the  
14      amounts on the spreadsheet were sent to each  
15      plan's respective custodian, and then  
16      75 percent of the gross reclaim was paid out  
17      to Ganymede."

18                  And in 2015, why was 75 percent of  
19      the gross reclaim paid out to Ganymede?

20           A    In late 2014, after the partners of  
21      Argre decided not to work together, we  
22      weren't sure we would be able to continue  
23      doing business with Solo Capital or its  
24      related entities.

25                  And as I mentioned, two of my

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1 former partners, Mr. Stein and Mr. Lhote, had  
2 decided to go off and do business on their  
3 own. And they had acquired North Channel  
4 Bank, got authorizations to have it act as a  
5 custodian, had decided to work with former  
6 employees of Solo, and were going to be  
7 effectively competing in this dividend  
8 arbitrage marketplace.

9 So with respect to Solo Capital,  
10 where Mr. Van Merkenstein and myself, and  
11 ultimately Mr. Klugman, preferred to continue  
12 our relationship and client business, we had  
13 discussions that initially were tense because  
14 Mr. Shah thought that Mr. Van Merkenstein  
15 and myself were investors in the bank, aware  
16 of the developments, were going to be  
17 competing.

18 And we assured them that that was  
19 farthest from the truth. We had no  
20 relationship with that, we're not aware of  
21 it, or became aware of it at the time that  
22 Argre Management effectively dissolved.

23 And Mr. Shah said that he would  
24 consider allowing us to participate as  
25 customers and clients with different

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1 entities, those that were no longer  
2 affiliated with or related to Mr. Stein  
3 and -- Mr. Stein and Mr. Lhote, and the  
4 economics would most likely change because  
5 there would be additional competitors in the  
6 marketplace, North Channel Bank, the ability  
7 to get liquidity in shares would be impacted,  
8 and that we would be -- the pension plans  
9 would be receiving a lower percentage based  
10 on the market pricing and the fees paid to  
11 the other counterparties.

12 And that became 66 percent to  
13 75 percent that would be paid away by the  
14 pension plans because of this market  
15 development, and perhaps Mr. Shah being upset  
16 and associating Mr. Van Merkenstein and  
17 myself with the actions of my former  
18 partners.

19 Q So, in this particular case, adding  
20 competitors into the market actually drove up  
21 the fee as opposed to the additional  
22 competitors usually driving a fee down?

23 A No. Additional competitors in the  
24 marketplace drive up the cost of borrowing  
25 shares if it's a stock lending transaction,